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APR 06 2007

OFFICE OF PETITIONS

In re Application of
David Croop et al
Application No. 10/677,195
Filed: October 2, 2003
For: SELF CLEANING DENTAL
MIRROR

DECISION ON PETITION

This is a decision on the petition, filed October 30, 2006, resubmitted on November 3, 2006, and supplemented on March 28, 2007, which is being treated as a petition under 37 CFR 1.8(b), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is GRANTED.

This application was held abandoned for failure to timely respond to the non-final Office action of December 29, 2005, which set a three (3) month shortened statutory period for reply. Accordingly, a reply was due on or before March 30, 2006, or on or before June 29, 2006, with extensions of time under 37 CFR 1.136(b). A Notice of Abandonment was mailed on October 13, 2006.

Petitioner states that a timely reply was transmitted by facsimile transmission on May 11, 2006, and mailed also via certificate of mailing on May 11, 2006, which included a reply to the non-final Office action and a check in the amount of \$225 to cover a two month extension of time fee (a copy of which was received on March 28, 2007). Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing, dated May 11, 2006, which would have rendered the reply timely if received. Petitioner has also submitted an affidavit attesting to the fact that he has personal knowledge that a reply was faxed on May 11, 2006 and, further, that a check for \$225, along with the reply, was also mailed via certificate of mailing on May 11, 2006. Petitioner further states that he personally signed the certificate of mailing, "put the contents into the envelope" and is "personally aware that check number 2095 was enclosed therewith."

The faxed reply to the non-final Office action of December 29, 2005 was received on May 11, 2006 and is of record in the file; however, the reply and \$225 check for the two (2) month extension of time mailed via certificate of mailing has not to date been associated with this file. It is noted that the reply, under the "Remarks" section, references the enclosure of a check in the amount of \$225 for the extension of time fee.

The correspondence including the \$225 check has not to date been located. Failure to receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(b), reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement, which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report transmission may be used to support this statement.

The petition satisfies the above requirements of 37 CFR 1.8(b). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of December 29, 2006 is hereby withdrawn and

the application restored to pending status.. The Notice of Abandonment mailed on October 13, 2006 is vacated.

The copy of the reply and fee of \$225 received on October 30, 2006 and November 3, 2006 will be accepted in place of the reply mailed via certificate of mailing on May 11, 2006.

This application is being referred to Technology Center AU 3732 for appropriate action in the normal course of business on the reply to the non-final Office action of December 29, 2005.

A handwritten signature in cursive script, appearing to read "Frances Hicks", is written over the typed name.

Frances Hicks
Petitions Examiner
Office of Petitions